NO. 83-6173

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ROLAND PAUL HAMILTON,

Petitioner,

v.

WALTER D. ZANT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

I.

Did the Supreme Court of Georgia properly conclude, contrary to the state habeas corpus court, that Petitioner received effective assistance of counsel at the guilt stage of the trial?

TABLE OF CONTENTS

	Page(s)
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	3
REASON FOR NOT GRANTING THE WRIT	4
I. THE SUPREME COURT OF GEORGIA PROPERLY CONCLUDED THAT PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT PHASE OF HIS TRIAL.	4
CONCLUSION.	9
CERTIFICATE OF SERVICE.	10

TABLE OF AUTHORITIES

Page(s)

Cases cited:

Hamilton v. Georgia, 446 U.S. 961 (1980). 1,

Hamilton v. Georgia, 449 U.S. 1103 (1981) 2,

Hamilton v. State, 244 Ga. 145, 259 S.E.2d 81 (1979). 1,

Hamilton v. State, 246 Ga. 264, 271 S.E.2d 173 (1980) 1,

Lovett v. Florida, 627 F.2d 706 (5th Cir. 1980) . 8,

Washington v. Strickland, 693 F.2d 1243 (5th Cir. 1982) (en banc), cert. granted, ___ U.S. ___, ___ S.Ct. ___ (1983) 8,

Zant v. Hamilton, 251 Ga. 553, ___ S.E.2d ___ (1983) 2, 7, 8

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PART ONE

STATEMENT OF THE CASE

Petitioner, Roland Paul Hamilton, was indicted by the grand jury of Chatham County, Georgia, during the June Term of 1977, for the murder of John A. Shinall. Following a trial by jury, Petitioner was found guilty of murder and sentenced to death. A subsequent motion for a new trial was denied and a notice of appeal was filed on March 10, 1979. On direct appeal, the Supreme Court of Georgia affirmed the conviction and the death sentence. Hamilton v. State, 244 Ga. 145, 259 S.E.2d 81 (1979).

A petition for a writ of certiorari was filed in the Supreme Court of the United States. That Court granted the petition and remanded the case to the Supreme Court of Georgia for further review. Hamilton v. Georgia, 446 U.S. 961 (1980). On remand, the Supreme Court of Georgia reaffirmed the death sentence. Hamilton v. State, 246 Ga. 264, 271 S.E.2d 173

(1980). A second petition for a writ of certiorari was denied on January 12, 1981. Hamilton v. Georgia, 449 U.S. 1103 (1981).

The Petitioner then filed a petition for habeas corpus relief in the Superior Court of Butts County in March 1981. A first hearing was held on the petition on October 6, 1981 at which time various witnesses testified including the assistant district attorney, Petitioner's trial counsel and Petitioner's mother. A second hearing was held on December 1, 1981. Petitioner himself testified and also presented the testimony of Dr. Larry Howard. A third hearing was held on April 16, 1982, at which time arguments were presented and documentary evidence was submitted. A hearing was held on April 15, 1983 at which time two attorneys were offered as "experts." Additional documentary evidence was also tendered at that time. A final hearing was held on April 21, 1983, at which time Petitioner offered an additional attorney to testify as an "expert." The trial transcript and record utilized on appeal were also presented to the state habeas corpus court. After reviewing all of this evidence, the court granted habeas corpus relief as to the conviction and sentence on June 21, 1983, concluding that Petitioner received ineffective assistance of counsel at both phases of his trial.

The Respondent filed an appeal to the Supreme Court of Georgia challenging the findings by the state habeas corpus court, both as to the conviction and the sentence. The Supreme Court of Georgia concluded that Petitioner received effective assistance of counsel at trial, but found that Petitioner received ineffective assistance of counsel at the penalty phase. Thus, the court vacated the death sentence but affirmed the conviction. Zant v. Hamilton, 251 Ga. 553, ___ S.E.2d ___ (1983). Petitioner has thus filed the instant petition for a writ of certiorari from the decision by the Supreme Court of Georgia.

PART TWO

STATEMENT OF FACTS

The facts underlying the instant conviction were thoroughly set forth by the Supreme Court of Georgia in its review on direct appeal. A detailed statement of the facts will not be set forth at this time, but will be reviewed as necessary to examine the allegation presented. The evidence presented before the state habeas corpus court will be examined during the argument portion of the brief.

PART THREE

REASON FOR NOT GRANTING THE WRIT

I. THE SUPREME COURT OF GEORGIA PROPERLY CONCLUDED THAT PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT PHASE OF HIS TRIAL.

Petitioner has challenged the decision by the Supreme Court of Georgia concluding that Petitioner received effective assistance of counsel at the guilt phase of his trial, which decision is contrary to that reached by the state habeas corpus court. Petitioner asserts that the Supreme Court of Georgia erred in concluding that no prejudice had been demonstrated at the guilt-innocence phase of the trial and that the Supreme Court of Georgia did not apply any standard in making this decision.

The evidence presented at the state habeas corpus court revealed that trial counsel, Mr. John F. M. Ranitz, Jr., had been in practice for approximately thirty-three years at the time of the trial and had devoted approximately twenty-five percent of his practice to criminal cases. Two other attorneys in Mr. Ranitz' office helped him with the preparation of the case. One of these attorneys interviewed the Petitioner while he was in jail and also talked with some of the police officers. This particular attorney had been an assistant district attorney previously and knew some of the police officers and people in the district attorney's office. Attorney Herman Coolidge talked with some of the witnesses and Mr. Ranitz also talked to the police officers and detectives as well. Mr. Ranitz talked with the assistant district attorney who tried the case and had access to the state's file. Mr. Ranitz also testified that he found some correspondence in his file with the forensic evaluation unit at Georgia Regional Hospital. At the time Mr. Ranitz received the case, the Petitioner had already been indicted, thus, there was no preliminary hearing conducted.

The testimony reveals that Mr. Ranitz reviewed the file of the district attorney and examined autopsy reports, statements by witnesses and the statements of the Petitioner. Mr. Ranitz testified in regard to the conduct of the voir dire that he had been practicing in Savannah for thirty years and had a strategy of not irritating the jury. He also indicated that he knew quite a few people on the panel and did not feel that it was necessary to conduct an extensive examination. He talked to the district attorney concerning a manslaughter charge, but was unsuccessful in negotiating a plea. He made a tactical decision to stipulate the cause of death during the guilt-innocence phase because he did not want the photographs of the body put into evidence and did not want the testimony of Dr. Howard to come in at the guilt-innocence phase concerning the condition of the body. He felt that this stipulation was beneficial and was a part of his overall trial strategy. This also necessarily eliminated the testimony of Dr. Howard concerning the nature and extent of the wounds.

Mr. Ranitz talked to the Petitioner concerning statements that had been made and determined that the statements were generally exculpatory. Mr. Ranitz also testified that the Petitioner told him that the statements were voluntary and that he was not coerced into making any of the statements. Mr. Ranitz made a tactical decision not to place the Petitioner on the witness stand because he did not think that the Petitioner could withstand cross-examination.

Dr. Larry Howard testified before the state habeas corpus court. Dr. Howard had examined the body of the victim after the body had been exhumed. He did not testify that the wounds were consistent with mututal combat, but merely indicated that the wounds were combative wounds rather than torturing wounds. He testified that the wounds were inflicted with what appeared to be intent to incompacitate and not merely to inflict pain. He also testified that the body was in an extremely advanced stage of decomposition which had a great effect on any determinations

he could make. He stated he had no way to determine whether any fighting took place between the two individuals.

The Supreme Court of Georgia concluded the following in regard to the superior court's review of the issues:

> The superior court in this proceeding has concluded that Hamilton received ineffective assistance of counsel at the guilt-innocence and sentencing stages of his trial. This conclusion is based on the following findings: that although counsel knew only four or five members of the traverse jury panel, he questioned only three jurors on voir dire examination and only as to a matter unrelated to capital punishment; that he made no application for investigative funds and conducted no independent investigation; that no witnesses were personally interviewed prior to their testimony; that the autopsy report and other expert medical evidence revealed that two types of wounds, stabbing and tearing, were inflicted upon the deceased; that this supported Hamilton's statement that Billie Jean Rose hit the victim on the head with a bottle; however, defense counsel failed to cross-examine Billie Jean Rose concerning this; that the deceased had a known propensity for violence, which was not investigated; that there was no investigation of grounds on which Billie Jean Rose's testimony and her credibility could have been impeached; that there was no investigation of a prior criminal conviction entered against Hamilton when he was

> 18 years of age, even though defense counsel knew that this would be offered against Hamilton if he was convicted; that no member of Hamilton's family ws contacted prior to trial, even though they could have given evidence in mitigation; and that the state had an agreement not to prosecute Billie Jean Rose, which defense counsel did not require the state to disclose.

Zant v. Hamilton 251 Ga. at 554.

The court concluded that these findings were supported by the evidence.

After examining these findings, the Supreme Court of Georgia concluded that the findings made by the superior court supported the conclusion that Petitioner received ineffective assistance of counsel at the penalty phase, but did not support the conclusion that he received ineffective assistance at the guilt-innocence stage. The court found:

> In our opinion, even if those portions of Billie Jean Rose's testimony constituting a disclaimer of her involvement in the crimes be disbelieved as self-serving, Hamilton's own pretrial statements, as well as other evidence in the case, lead inexorably to the conclusion that he is guilty of murder. "[E]ven when counsel's investigation and preparation are determined to have been seriously inadequate, there must be a showing that the habeas petitioner was to some degree prejudiced thereby . . . " Washington v. Watkins, 655 F.2d 1346, 1356 (5th Cir. 1981).

Zant v. Hamilton supra. at 555. Thus, the court concluded that counsel was not ineffective and no prejudice was shown under any standard that could have been applicable.

Petitioner asserts that the state habeas corpus court found that no pretrial investigation was conducted. This finding actually relates to counsel's lack of outside investigation. The record is clear on its face that counsel did review the entire file of the district attorney, that other attorneys working with counsel interviewed witnesses and that there was an investigation conducted in the case. The mere fact that counsel may not have conducted an investigation separate from these sources is insufficient to conclude that counsel was ineffective. "Counsel for a criminal defendant is not required to pursue every path until it bears fruit or until all conceivable hope withers." Lovett v. Florida, 627 F.2d 706, 708 (5th Cir. 1980). The attorney must conduct an investigation, including an examination of the facts, circumstances and law involved. The record in this case clearly shows that Mr. Ranitz did make such an investigation by examining all of the evidence that the state had in its possession and by having other attorneys talk with various persons involved. Mr. Ranitz also talked with the Petitioner in this case.

Respondent further asserts that the burden of proving prejudice should rest upon the Petitioner and Petitioner should be required to show that the ineffective assistance, if such exists, must result in an actual and substantial disadvantage to the course of his defense. Washington v. Strickland, 693 F.2d 1243, 1262 (5th Cir. 1982) (en banc), cert. granted, ___ U.S. ___, ___ S.Ct.___ (1983). A review of the facts of the instant case clearly shows that no actual and substantial disadvantage resulted to the Petitioner from any alleged ineffectiveness on the part of trial counsel. As noted by the Supreme Court of Georgia, the evidence led clearly to the conclusion that the Petitioner was guilty of murder. No showing made by the Petitioner could have resulted in a

different verdict in this case. Therefore, Petitioner was not actually and substantially disadvantaged by any actions or inactions on the part of trial counsel.

Respondent submits that the Supreme Court of Georgia properly concluded that Petitioner received effective assistance of counsel at trial and was not prejudiced by any inactions on the part of trial counsel. This finding should be made under any standard applied. Therefore, no reason exists for this Court to grant certiorari to review any issue presented in this case.

CONCLUSION

For the above and foregoing reasons, Respondent respectfully requests that this Court deny the petition for a writ of certiorari filed on behalf of Petitioner, Roland Paul Hamilton.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mary Beth Westmoreland, a member of the bar of the Supreme Court of the United States and counsel of record for the Respondent, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this brief in opposition for the Respondent upon the Petitioner by depositing a copy of the same in the United States Mail with proper address and adequate postage to:

Mr. Robert G. Fierer
141 Walton Street N.W.
Atlanta, Georgia 30303

This 23rd day of February, 1984.

Mary Beth Westmoreland
MARY BETH WESTMORELAND